

NPS-CM-10-010



## ACQUISITION RESEARCH SPONSORED REPORT SERIES

---

**United States Special Operations Command (USSOCOM):  
Construction Management Handbook**

**11 February 2010**

**by**

**Capt. Chris M. Hearl, USAF**

Advisors: E. Cory Yoder, Senior Lecturer, and  
Lt. Col. Timothy G. Hawkins, USAF, Assistant Professor

Graduate School of Business & Public Policy

**Naval Postgraduate School**

Approved for public release, distribution is unlimited.

Prepared for: Naval Postgraduate School, Monterey, California 93943



ACQUISITION RESEARCH PROGRAM  
GRADUATE SCHOOL OF BUSINESS & PUBLIC POLICY  
NAVAL POSTGRADUATE SCHOOL

Report Documentation Page				Form Approved OMB No. 0704-0188	
Public reporting burden for the collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington VA 22202-4302. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to a penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.					
1. REPORT DATE <b>11 FEB 2010</b>		2. REPORT TYPE		3. DATES COVERED <b>00-00-2010 to 00-00-2010</b>	
4. TITLE AND SUBTITLE <b>United States Special Operations Command (USSOCOM): Construction Management Handbook</b>				5a. CONTRACT NUMBER	
				5b. GRANT NUMBER	
				5c. PROGRAM ELEMENT NUMBER	
6. AUTHOR(S)				5d. PROJECT NUMBER	
				5e. TASK NUMBER	
				5f. WORK UNIT NUMBER	
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) <b>Naval Postgraduate School, Graduate School of Business &amp; Public Policy, Monterey, CA, 93943</b>				8. PERFORMING ORGANIZATION REPORT NUMBER	
9. SPONSORING/MONITORING AGENCY NAME(S) AND ADDRESS(ES)				10. SPONSOR/MONITOR'S ACRONYM(S)	
				11. SPONSOR/MONITOR'S REPORT NUMBER(S)	
12. DISTRIBUTION/AVAILABILITY STATEMENT <b>Approved for public release; distribution unlimited</b>					
13. SUPPLEMENTARY NOTES					
14. ABSTRACT					
15. SUBJECT TERMS					
16. SECURITY CLASSIFICATION OF:			17. LIMITATION OF ABSTRACT <b>Same as Report (SAR)</b>	18. NUMBER OF PAGES <b>81</b>	19a. NAME OF RESPONSIBLE PERSON
a. REPORT <b>unclassified</b>	b. ABSTRACT <b>unclassified</b>	c. THIS PAGE <b>unclassified</b>			

The research presented in this report was supported by the Acquisition Chair of the Graduate School of Business & Public Policy at the Naval Postgraduate School.

**To request Defense Acquisition Research or to become a research sponsor, please contact:**

NPS Acquisition Research Program  
Attn: James B. Greene, RADM, USN, (Ret)  
Acquisition Chair  
Graduate School of Business and Public Policy  
Naval Postgraduate School  
555 Dyer Road, Room 332  
Monterey, CA 93943-5103  
Tel: (831) 656-2092  
Fax: (831) 656-2253  
e-mail: [jbgreene@nps.edu](mailto:jbgreene@nps.edu)

Copies of the Acquisition Sponsored Research Reports may be printed from our website [www.acquisitionresearch.org](http://www.acquisitionresearch.org)



ACQUISITION RESEARCH PROGRAM  
GRADUATE SCHOOL OF BUSINESS & PUBLIC POLICY  
NAVAL POSTGRADUATE SCHOOL

## Foreword

This handbook is meant to serve as a tactical guide for Contingency Contracting Officers (CCOs) performing construction-focused activities within the USSOCOM theatre of operations. This handbook is not intended to override or contradict any applicable regulation, policy, or standard operating procedure, nor is it intended to cover contingency contracting principles from A-Z. For an overview of contingency contracting fundamentals, see the *USSOCOM Contingency Contracting Module* or *Contingency Contracting-A Joint Handbook for the 21<sup>st</sup> Century*. As an acquisition professional, a CCO should always practice responsible stewardship, flexibility, and adaptability to best support mission objectives. While this handbook will provide examples, possible solution sets, and guiding principles for successful construction management by a CCO, no two contingency experiences are the same. Thus, this handbook is intended to help the CCO operate with a synergistic approach to integrating the joint capabilities of the expeditionary environment.



THIS PAGE INTENTIONALLY LEFT BLANK





## ACQUISITION RESEARCH SPONSORED REPORT SERIES

---

### **United States Special Operations Command (USSOCOM): Construction Management Handbook**

**11 February 2010**

**by**

**Capt. Chris M. Hearl, USAF**

Advisors: E. Cory Yoder, Senior Lecturer, and  
Lt. Col. Timothy G. Hawkins, USAF, Assistant Professor

Graduate School of Business & Public Policy

**Naval Postgraduate School**

Disclaimer: The views represented in this report are those of the author and do not reflect the official policy position of the Navy, the Department of Defense, or the Federal Government.



THIS PAGE INTENTIONALLY LEFT BLANK



# Table of Contents

<b>Chapter I. Operational Framework .....</b>	<b>1</b>
A. Overview .....	1
B. Contracting Officer Responsibilities.....	1
C. Operational Environment.....	3
D. Contract Review .....	9
E. Funding .....	13
F. Delegated Contracting Authority .....	25
<b>Chapter II. Strategic Alignment.....</b>	<b>33</b>
A. Synergistic Approach.....	33
B. Intra-Agency Coordination.....	36
C. Operational Leadership .....	37
D. Integration of Contracting .....	37
<b>Chapter III. Pre-Award .....</b>	<b>39</b>
A. Acquisition Planning .....	39
B. Establishing Roles and Responsibilities .....	40
C. Requirements Definition .....	41
D. Oversight Program .....	42
E. Solicitation Documents.....	43
F. Key Construction Clauses .....	44
G. Drawings .....	49
H. Evaluation Procedures .....	50





I.	Source Selection .....	50
<b>Chapter IV.</b>	<b>Award .....</b>	<b>53</b>
A.	Documentation .....	53
B.	Distribution .....	53
<b>Chapter V.</b>	<b>Post Award–Contract Administration .....</b>	<b>55</b>
A.	Safety .....	55
B.	Site Visits.....	57
C.	Remedies for Change.....	57
D.	Progress Monitoring .....	60
E.	Invoices .....	62
F.	Terminations (SOFARS 56.49).....	63
<b>G.</b>	Final Actions.....	64
H.	Conclusion.....	65
<b>List of References.....</b>		<b>67</b>



# Chapter I. Operational Framework

## A. Overview

The *Federal Acquisition Regulation (FAR)* 2.101 defines construction this way: “*Construction*: alteration or repair (including dredging, excavating and painting) of buildings, structures or other real property. Construction projects may be performed on a military installation (air base, camp, forward operating base, etc) or somewhere within a local village or city” (General Services Administration, 2005). This dynamic demands the close coordination and oversight of multiple organizations to successfully complete a construction project.

CCOs must act as logistics facilitators, business advisors, resource managers, and general tactical experts in fulfilling the contractual requirements of the USSOCOM mission. As key enablers of this mission, CCOs are often asked to fulfill construction requirements in austere locations with little or no training in construction terminology, concepts, and protocols. CCOs must understand the implications of this lack of training if they are to interact effectively with the other functions around them. CCOs are often expected to be the lead agents in integrating the necessary capabilities in a joint environment; thus, CCOs must be able to lean forward and pro-actively engage.

## B. Contracting Officer Responsibilities

A Contracting Officer (CO) must be able to fulfill the following responsibilities:

- Ensure responsible and effective contracts are awarded.
- Safeguard interests of US through stewardship of taxpayer funds.
- Exercise sound business judgment and fair, impartial treatment to contractors.



- Ensure all legal and regulatory requirements are met.
- Ensure sufficient funds are available before obligating.

It is important to understand the battlespace within which the CCO is operating and to fully understand the impact the requirement has on the overall mission objectives. The Air Force logistics management Agency has created an extremely useful tool, entitled *Contingency Contracting-A Joint Handbook for the 21<sup>st</sup> Century*—commonly known as the Contingency Contracting Joint Handbook (CCJH). CCOs are encouraged to review and even train using the CCJH prior to deploying into any contingency environment. This USSOCOM-focused construction module will try to avoid redundancies already addressed in other guides as much as possible; however, for purposes of clarity some concepts or fundamentals may be revisited to some degree.

For purposes of reference, the United States Central Command (CENTCOM) has an established regulation (Number 415-1) addressing base/camp development and construction elements from an engineering standpoint within their Area of Responsibility (AOR). This regulation is commonly known as the “[Sand Book](#)”. There is also an entire *Air Force Handbook Series 10-222* with volumes of comprehensive engineering-based elements, including refugee camp planning, installation of Harvest Eagle and Harvest Falcon life support kits, and other items useful in a bare-base environment. The USSOCOM Contracting Portal (restricted access only to tasked CCOs) and the Defense Acquisition University’s Acquisition Community Connection—Contingency Contracting—contain multiple samples, templates, and policies in addition to those included in this handbook. CCOs are also encouraged to use these resources to gain further in-depth knowledge on contingency contracting initiatives.



## C. Operational Environment

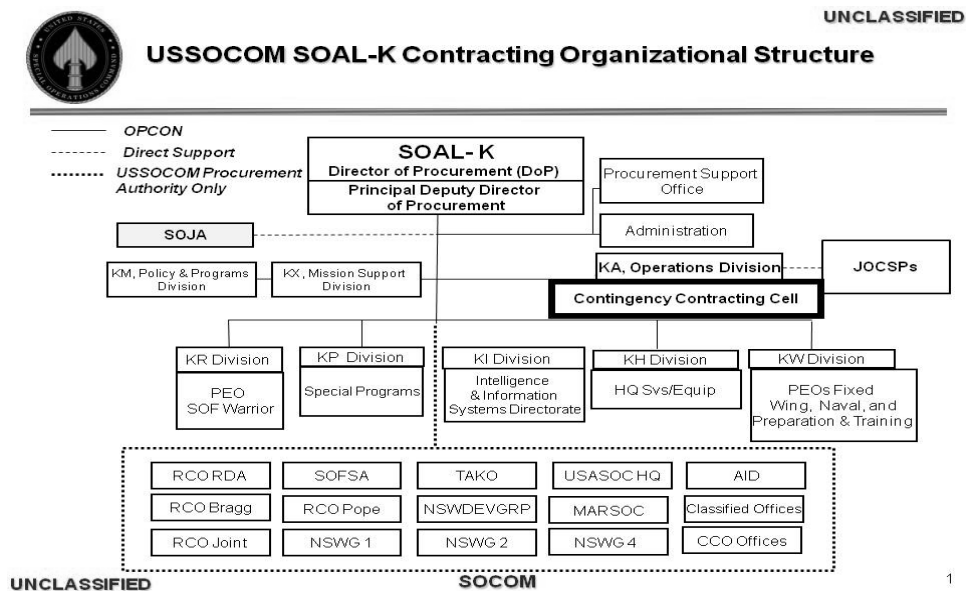
USSOCOM CCOs are supporting operations conducted by SOF teams encompassing the use of small units in direct and indirect military actions designed for national security interest, strategic or organizational objectives. These units are highly trained, with specialized personnel and equipment, and tactics that exceed the routine capabilities of conventional military forces. The nature of SOF operations dictates that they are often extremely politically sensitive missions—missions in which only the best-equipped and most-proficient forces are deployed. These forces need support from a CCO in order to sustain their quality of life on/off base and to enable them to build relationships with the local community. Often, the latter is done through procurement and reconstruction efforts to show goodwill and support from the coalition forces.

### 1. USSOCOM Procurement Authority:

The USSOCOM commander has unique procurement authorities and responsibilities compared to that of other Combatant Commands (COCOMs). Title 10 *USC*, Section 167, vests in the USSOCOM commander the responsibility and authority to develop and acquire special operations-peculiar equipment, the authority to exercise the functions of the head of agency, and the authority to execute funds. USSOCOM uses special appropriation funding known as Major Force Program-11 (MFP-11) funds to support the development, acquisition, and sustainment activities for USSOCOM. This authority is delegated down to the USSOCOM Acquisition Executive (SOAE), Mr. James W. Cluck, as the Senior Procurement Executive for the command. He executes USSOCOM funding authority through the Special Operations Acquisition and Logistics Center (SOAL). The contracting arm of SOAL is the Director of Procurement (also known as SOAL-K), located within the USSOCOM Headquarters on MacDill AFB, Florida. SOAL-K is responsible for all procurement-related matters within USSOCOM—from supporting SOF teams with CCOs to major acquisitions of unique weapons systems for the command. SOAL-K places CCOs within



deployed SOF teams through the Operations Division, SOAL-KA, as depicted in Figure 1.



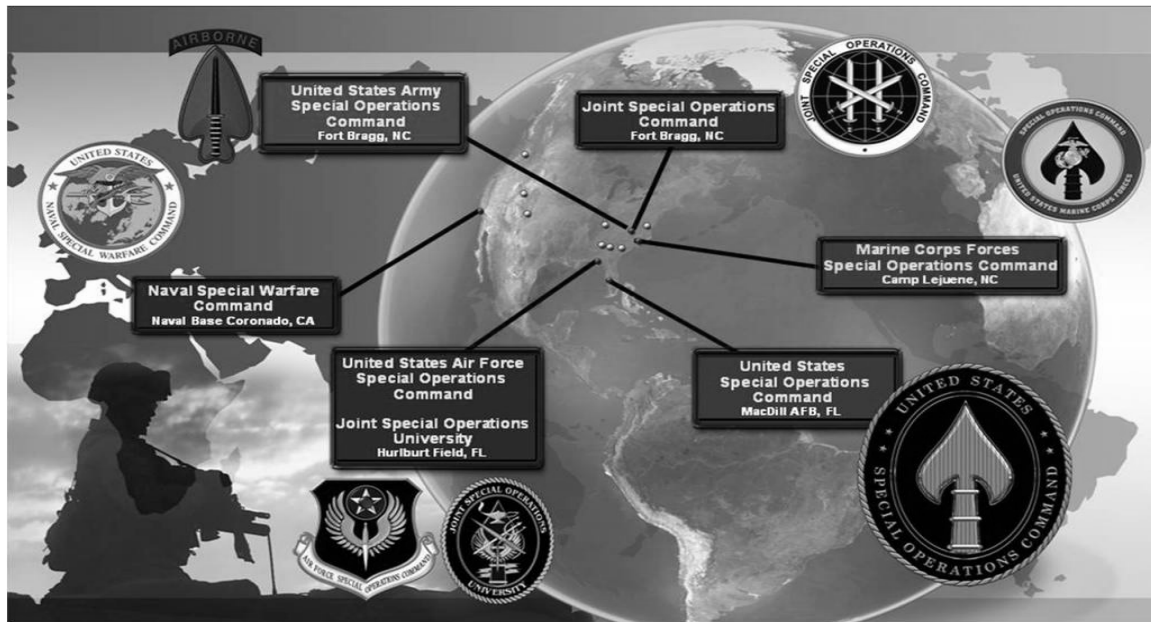
**Figure 1. Operations Division and Contingency Contracting Cell within the USSOCOM Contracting Organizational Structure (SOAL-K, 2009)**

## 2. Contingency Contracting Cell:

The SOAL-KA division of the SOAL-K procurement office handles the Contingency Contracting planning and policy. It also conducts the orientation and training for CCOs before they deploy into a specific AOR with SOF teams. As part of USSOCOM, SOAL-KA is not a force provider, nor does it have operational control (OPCON) over the individual CCO assigned to support SOFs.



## USSOCOM Service Headquarters (CONUS Footprint)



**Figure 2. USSOCOM Service Component Command Headquarters**  
(SOAL-K, 2008)

### 3. Command Structures:

The Army, Navy, Air Force, and Marine Corps commands of USSOCOM (see Figure 2 above) use authorities and budgets granted to the USSOCOM commander by legislation to organize, equip, train, and deploy their forces to support operational commanders around the globe. When SOF teams are outside the United States, they are under the OPCON of the respective geographic Combatant Commander (see Figure 4 below). Administratively, the SOF forces still report to the respective special operations commands in theater, as depicted in Figure 3 below.

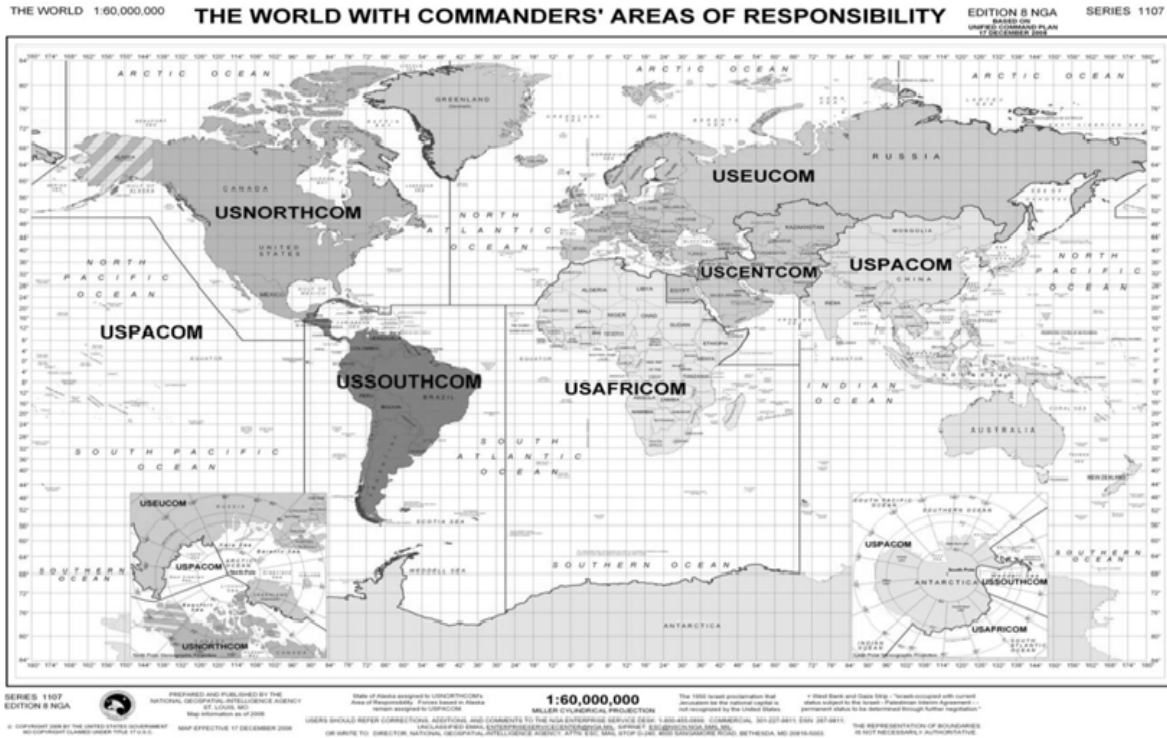


## Theatre Special Operations Commands



**Figure 3. Special Operations Theatre Commands Throughout the World**  
(SOAL-K, 2008)

Over 10,000 members of SOF are under OPCON of Central Command (CENTCOM). Over 2,000 others are scattered throughout the globe in over 60 countries, including over 100 SOF personnel assigned to the North Atlantic Treaty Organization (NATO) International Security Assistance Forces (ISAF) structure (Olson, 2009). Figure 4 below depicts the respective AORs for the US Combatant Commands throughout the world.



**Figure 4. AOR Breakdown for Each US Combatant Command**

[http://www.defenselink.mil/home/features/2009/0109\\_unifiedcommand/images/unified-command\\_world-map.jpg](http://www.defenselink.mil/home/features/2009/0109_unifiedcommand/images/unified-command_world-map.jpg)

Special Operations Command Central (SOCCENT) is the SOF component to CENTCOM and is located at MacDill AFB. SOCCENT's forward deployed Command is named Combined Forces Special Operations Component Command (CFSOCC) and is located at Camp As Sayliyah, Qatar. This will be the first contact point for information and coordination by USSOCOM CCOs located in the CENTCOM AOR.





**Current contact information for CFSOCC Director of Contracting is:**

---

**a. CFSOCC is organized as follows:**

- Commanding General (CG)/Special Staff
- J1 - Personnel
- J2 - Intelligence
- J3 - Operations
- J4 – Logistics (Contracting under J4)
- J6 – Communications
- J8 – Programming & Comptroller
- HQ Commandant

**b. Combined Joint Special Operations Task Forces (CJSOTF)**

- CJSOTF-AP (Arabian Peninsula – HQ in Balad AB)
- CJSOTF-A (Afghanistan – HQ in Bagram AB)

**c. Special Operations Command and Control Elements (SOCCE)**

- SOCCE-IZ (Iraq-Baghdad)
- SOCCE-A (Afghanistan-Kabul)
- SOCCE-HOA (Djibouti-Camp Lemonier)

These organizations provide a link to CCOs throughout the various AORs and should be contacted frequently for support and resources, as well as to insure continuity across the theatre. The SOAL-KA is the strategic focal point for these organizations, with CFSOCC being the first line of tactical contracting support for deployed CCOs.



## D. Contract Review

### 1. Review Policy (IAW SOFARS 5601-1)

**Table 1. SOFARS 5601-1.2I - Construction Approval Levels of Authority – March 2009<sup>1</sup>**

<b>SOFARS 5601-1.2I*</b> <b>CONSTRUCTION APPROVAL LEVELS OF AUTHORITY – March 2009<sup>1</sup></b> (unless further restricted by individual Contracting Officer warrant levels) <b>All USSOCOM Contracting Offices and Field Ordering Officers (FOO)</b> <b>(with specific construction contracting authority delegations)</b>		
<b>ACTION</b>	<b>REVIEW</b>	<b>APPROVAL</b>
<b>1. Requests for Proposal, Invitations for Bid, Requests for Quote, and Amendments:</b>		
Up to Micro-purchase Threshold	FOO <sup>2,3</sup> or KO	FOO <sup>2,3</sup> or KO
Over Micro-purchase Threshold up to \$550,000	KO	Chief, Contracting Office <sup>4</sup>
Over \$550,000 to \$750,000	Legal	SORDAC-KA
Over \$750,000	SORDAC-KA, Legal	DOP <sup>5</sup>
<b>5. Business Clearance:</b>		
Over Micro-purchase Threshold up to \$250,000	KO <sup>4</sup>	Chief, Contracting Office
Over \$250,000 to \$750,000	Chief, Contracting Office, Legal	SORDAC-KA
Over \$750,000 to \$1,500,000	SORDAC-KA, Legal	DOP

1 a. Headquarters Contracting Division's (HCD) or Field Contracting Office's (FCO) thresholds specified in *5601-1.2a-k* apply if they are lower than the approval levels above.

b. Thresholds established for acquisition plans, D&Fs, J&As, ratifications, and terminations apply to construction.

2 Review and approval applies to RFQs only. All contract award documents must be reviewed and approved by the appropriate contingency contracting officer prior to award.

3 Contingency contracting only and with specifically delegated authority under this policy memorandum for unspecified minor military construction (required by *DoD Financial Management Regulation*, Volume 12, Chapter 27).

4 If the Chief, Contracting Office is not APDP Level II and has not attended CON 244, SORDAC-KA review is required.

5 Project must be specifically approved in advance by CDRUSSOCOM.

**NOTE** – Contracting Officers shall obtain and document internal independent reviews of their actions between the simplified acquisition threshold and headquarters review thresholds.



**Table 2. Attachment 5601-1.2k - Approval Levels of Authority and Document Review – February 2007**

Attachment 5601-1.2k		
APPROVAL LEVELS OF AUTHORITY AND DOCUMENT REVIEW – February 2007		
(unless further restricted by individual Contracting Officer warrant levels)		
Contingency Operations (SORDAC-KCC)		
<u>ACTION</u>	<u>REVIEW</u>	<u>APPROVAL</u>
<b>1. Acquisition Plans</b> (not applicable)		
<b>2. Type of Contract (D&amp;F):</b> (as required)		
Over \$550,000	KO	SORDAC-KA
<b>3. Justification and Approvals (J&amp;As):</b>		
Up to \$550,000	KO	KO
Over \$550,000 to \$5,500,000	KO, Legal	SORDAC-KA
Over \$5,500,000 to \$11,500,000	KO, & SORDAC-KA	CAG*
Over \$11,500,000 to \$57,000,000	KO, SORDAC-KA & CAG*	HCA/DOP
Over \$57,000,000	KO, SORDAC-KA & CAG*	SPE
<b>4. Competitive Requests for Proposal, Invitations for Bid, Requests for Quote, and Amendments:</b> <sup>†</sup>		
Up to \$550,000	KO	KO
Over \$550,000	KO, Legal	SORDAC-KA
<b>5. Business Clearance:</b> <sup>†</sup>		
Over \$550,000	KO	SORDAC-KA
<b>6. Contract Clearance:</b> **		
Over \$550,000	KO	SORDAC-KA
<b>7. Ratifications:</b>		
Up to \$10,000	KO	Chief, Contracting Office
Over \$10,000 to \$25,000	KO, Chief, Contracting Office	SORDAC-KA
Over \$25,000	Chief, Contracting Office/SORDAC-KA	DOP
<b>8. Terminations:</b>		
Termination for Default	KO	SORDAC-KA***
Termination for Convenience (up to \$550,000)	KO	KO
Termination for Convenience (Over \$550,000)	KO	SORDAC-KA***

\* CAG will coordinate Legal Review.

\*\* Contract Clearance review and approval may be waived by the Business Clearance Approval Authority. Details of the negotiation must be documented in the post-negotiation Business Clearance Memorandum in accordance with [FAR 15.406-3](#).

\*\*\* SORDAC-KA will obtain Legal support as required. Includes GSA for service



## **2. Theatre Business Clearance**

### **a. Policy**

October 19, 2007, John Young (acting Secretary of Defense for Acquisition, Technology, and Logistics (AT&L)) published a policy letter stating that all DoD contracting officers shall ensure, prior to award, that the Commander, Joint Contracting Command–Iraq/Afghanistan (JCC-I/A) has approved any statements of work and terms and conditions that relate to the delivery of supplies and services (including engineering and construction) in or to Iraq or Afghanistan. This policy also stated that the procuring contracting officer shall assign JCC-I/A all *FAR* 42 and *DFARS* 242 contract administration as each contract relates to Iraq or Afghanistan.

Prior to John Young's policy letter, on October 15, 2007, Mr. Shay Assad (Director of Defense Procurement and Acquisition Policy) further instituted policy that left contract administration duties with the organization presently performing those duties unless specifically notified by JCC-I/A. This policy also stated that all procuring contracting officers must follow oversight compliance for CENTCOM, MNF-I, CJTF-82 and CSTC-A policies, directives, and terms and conditions. It stated that as applicable, JCC-I/A will transfer administration to DCMA, USACE, or similar agency.

On March 11, 2008, RDML Kathleen Dussault, Commander, JCC-I/A, distributed her policy to delegate theatre business clearance contracting reviews and contract administration for USSOCOM contracts in Iraq and Afghanistan to SOCENT IAW current CENTCOM policies as posted on [www.centcom.mil/sites/contracts/default.aspx](http://www.centcom.mil/sites/contracts/default.aspx).



## b. Contents for Review Packages

**Table 3. Contents of Contract Files**

<b><u>Justification and Approvals (J&amp;A):</u></b> J&A (with appropriate certification and review signatures)	<b><u>Source Selection or Evaluation Plans:</u></b> Source Selection Plan or Evaluation Plan Applicable Determination & Findings (D&Fs)
<b><u>Solicitations:</u></b> Solicitation Acquisition Plan (as applicable) Evaluation Plan (competitive only) Source Selection Plan (competitive only) Justification & Approval (non-competitive only) Administrative Checklist Local Legal Review	<b><u>Type of Contract (D&amp;F) (Letter, Personal Services, UCA):</u></b> D&F Local Legal Review SOW Funding Documents Draft Letter Contract
<b><u>Business Clearance:</u></b> Draft Competitive Range Determination (competitive only) Business Clearance Memorandum Proposal (non-competitive only) Audit Reports (non-competitive only) Evaluation Plan (competitive only) Local Legal Review Administrative Checklist Model Contract w/ applicable terms and conditions (See Note 2)	<b><u>Contract Clearance:</u></b> Contract Technical Evaluation (competitive only) Final Business Clearance Memorandum Copy of Deficiency Letter (competitive only) Administrative Checklist Local Legal Review Contract file items as requested by the reviewer
<b><u>Terminations:</u></b> Termination Authority Form Modification Local Legal Review Show Cause Letter	<b><u>Ratifications:</u></b> D&F (including all documentation of unauthorized commitment) Local Legal Review Ratification Checklist with associated documents

\* Reference *SOFARS* 5604.803 Contents of Contract Files, DCG Part 4.1 Contents of Contract Files, and DCG Part 4.2 Contract Files Assurance and “Chain of Custody” that also require SORDAC-KA Reviewers to review the quality of contract files and structure at the location in which the official contract file is stored.

### Notes:

1. All documents listed above are to be included in packages sent for review to SORDAC-KA as required and applicable to the specific contracting action.
2. The Contract Clearance review may be waived by the Business Clearance Approval Authority. Details of the negotiation must be documented and included in the post-negotiation portion of the Business Clearance Memorandum in accordance with [FAR 15.406-3](#).
3. In the absence of the Competition Advocate General (CAG) authority, the HCA/DOP will assume the review/approval duties.



## E. Funding

As mentioned above, USSOCOM has a unique funding situation with the MFP-11 designation. This designation includes many of the same funding appropriation laws and categories as the standard service line of accounting; however, there are variations and exceptions to these policies.

### 1. Policy Letter on MILCON

The USSOCOM SOAL-K published *Policy Memorandum 09-03* on December 8, 2008, defining the authorized funding limits for construction contracting. This policy was instituted as *IAW Special Operations Federal Acquisition Regulation Supplement (SOFARS) 5601-1*, USSOCOM Review Process and Approval Levels, Undersecretary of Defense for Acquisition, Technology, and Logistics, Delegation of Authority for Military Construction, dated 18 Jan 08, Undersecretary of Defense for Acquisition, Technology, and Logistics, Class Deviation—Use of Standard Form 44, Purchase Order-Invoice-Voucher, dated 14 Dec 00, 10 United States Code, Chapter 169 Military Construction, Federal Acquisition Regulation (*FAR*) Part 36, Construction and Architect-Engineer Contracts, Defense *FAR* Supplement (*DFAR*) Part 236, Construction and Architect-Engineer Contracts and *SOFARS* Part 5236. The policy memorandum set forth guidance for the award of USSOCOM contracts for unspecified minor military construction using operations and maintenance (O&M) funding. An unspecified minor military construction project is a military construction project that may be funded with O&M funds not to exceed \$750,000, unless an exception (i.e., life-threatening situation or fiscal rules) justifies a higher amount, but the project can not exceed \$1.5 million.



## **2. Fiscal Controls**

All appropriated funds are subject to three basic fiscal controls:

### **a. Purpose (31 USC 1301(a)):**

(Misappropriations Act) Appropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law. For example: family housing money should not be used to purchase new aircraft.

### **b. Time (31 USC 1502(a)):**

(Bona-fide Need Rule) An appropriation is available only for payment of expenses properly incurred during the period of availability or to complete contracts properly made during the period of availability.

### **c. Amount (31 USC 1341):**

(Anti-deficiency Act) An officer or employee of the United States Government may not make or authorize an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation, or involve the government in a contract or obligation for payment of money before an appropriation is made unless authorized by law.

## **3. Contingency operation funding sources**

Funding for contingency operations comes from a wide variety of sources, both within and beyond DOD appropriations. It is important that both comptroller and contracting personnel understand the purposes and limitations of these different types of funds, to ensure that expenses incurred are legal and proper. For questions concerning these sources, the CCO should contact the local finance representative.

The following table summarizes the major contingency operation funding sources:



**Table 4. Major Contingency Operation Funding Sources**

<b>O&amp;M Funding Authorities</b>	<b>Regulation</b>
• <i>General</i>	10 USC 2241(a)(6)
• Feed & Forage Act	41 USC 11
• CINC Initiative Fund	10 USC 166(a)
• Humanitarian and Civic Assistance	10 USC 401
<b>MILCON Funding Authorities</b>	
• <i>Military Construction</i>	10 USC 2802
• <i>Unspecified Minor Military Construction</i>	10 USC 2805(a)&(c)
• <i>Emergency Construction Authority</i>	10 USC 2803-2808
<b>Other US Funding Authorities</b>	
• Arms Export Control Act (State Dept)	22 USC 2751-2796
• Foreign Assistance Act (State Dept)	22 USC 2151-2430
• Defense Emergency Response Fund	Public Law 101-165
• Stafford Act (FEMA Reimbursement) (CONUS only)	42 USC 5121-5203
• Economy Act	31 USC 1535
<b>Foreign Country Funding Authorities</b>	
• Section 607, Foreign Assistance Act	22 USC 2357
• Section 7, United Nations Participation Act	22 USC 287d-1
• Acquisition and Cross-Servicing Agreements	10 USC 2341-2350





#### **4. Economy Act Orders (*FAR 17.500, 31 USC 1535*)**

##### **a. Inter/Intra-Agency Order:**

The Economy Act allows one agency to place an order for goods or services with another agency or with a major organizational unit within the same agency. This is commonly referred to as “contract off-loading.”

##### **b. Each Economy Act order requires a D&F stating:**

(1) The off-load is in the best interest of the Government.

(2) The supplies or services can't be obtained as conveniently or economically by contracting directly with a private source.

(3) The acquisition will be made under an existing contract by the servicing agency; or the servicing agency has the expertise or capability to enter into such a contract, and that this expertise or capability does not exist within the requesting agency; or that the servicing agency is specifically authorized by law or regulation to make such purchases on the behalf of other agencies.

##### **c. The Economy Act is what gives us:**

The authority to request contracting support between Services (e.g., an Army unit requesting support from an Air Force contracting element). An Economy Act order request can be placed on any form or document that is acceptable to both agencies; however, it is often placed on a DD Form 448 Military Interdepartmental Purchase Request (MIPR).

#### **5. Military Interdepartmental Purchase Request (MIPR) (DD Form 448)**

As its name implies, a MIPR is nothing more than a PR. Even though a MIPR is similar to an Army 3953, an Air Force Form 9, or a Navy NAVCOMPT 2276, there are some peculiar requirements for the acceptance and processing of the MIPR.



The following are some the major issues involved with the use of a MIPR (for more information refer to *DFARS* 208-7004 for the use, acceptance, and processing of the MIPR; and *DFARS* 253.208-1 / 2 on how to fill out a DD Form 448 / DD Form 448-2).

**a. Acceptance: (DD Form 448-2)**

Acceptance of an MIPR is required and must be completed by the activity accepting the MIPR on a DD Form 448-2. When there is a Resource Manager (RM) or Comptroller in the AOR, they will usually be the acceptance activity. They will receive the DD Form 448 MIPR, complete the DD Form 448-2, and return it to the requester. The RM will accept the MIPR and forward a PR to contracting (using the requester's fund cite) or will deposit the funds from the requester into the operational account and forward a PR to contracting with the operational fund cite. The activity accepting the MIPR must determine if a Category I (reimbursable fund) citation or a Category II (direct fund) citation will be used to acquire the supplies/services.

**(1) Category I** method of funding (*DFARS* 208.7004-2(b)(1)) would primarily be used if an RM was providing the required support from his/her own stocks or diverting supplies or services from an existing contract to support the requester. When the Category I method is used, the DD Form 448-2 is authority for the requiring activity to record the obligation of funds.

**(2) The Category II** method of funding (*DFARS* 208.7004-2(b)(2)) is what a CCO will most likely see. Under Category II, the fund cite on the MIPR can be used by the CCO directly on the contract. This method will be used any time a CCO has to award a new contract or modify an existing contract to provide the support required by the requesting activity. When the Category II method of funding is used, a copy of the signed contract is required by the requesting activity to record the obligation of funds.



**b. CCO Role:**

If the CCO receives the MIPR, then he/she will have to make the determination if the support is going to be provided via the Category I or II method of funding, complete the DD Form 448-2 accordingly and return it to the requester within 30 days of receipt. The CCO will also have to track the obligation of funds to avoid an ADA violation and provide a copy of all contracts to the requesting activity so they can also record the obligations. A CCO needs to understand the MIPR process and be prepared to either accept a MIPR directly from the customer or a PR from the RM/Comptroller with a fund cite from another Service.

**6. Bulk Funding**

In a contingency, the typical CCO will award thousands of contracts, all of which originate as requirements documents with certified accounting data. To ease the burden of the customer, the finance manager and CCO will agree upon a strategy to provide bulk funding. This will provide a single document that authorizes the CCO to write contracts against a specific fund cite. This works like a checking account: the bulk funding document (AF Form 616, DA3953, NAVCOMPT 2276, etc.) indicates the amount of funds available, and as each contract is written, the CCO deducts the contract amount from the remaining balance. This avoids delays inherent in receiving certification of funds from the finance managers for each contractual action and reduces the amount of paperwork required. Bulk funding is a highly recommended funding strategy.

**7. Operation & Maintenance (O&M) Funds:**

O&M dollars pay for the day-to-day expenses of doing business. It is easier to describe the things you **cannot** buy with O&M funds than it is to describe the incredibly wide range of products and services for which O&M funds are appropriate.



O&M funds are **not authorized** or available for:

- Procurement of centrally managed (supply system) items,
- Construction in excess of \$500,000, or
- Exercise-related construction that is not truly temporary in nature.

**a. O&M Sub-Appropriations**

**(1) Emergency and Extraordinary Expenses** (10 USC 127) are specifically fenced O&M funds to pay for any emergency or extraordinary expense which cannot be anticipated or classified. With proper approval, funds may be spent for any purpose determined to be proper, and such a determination is final and conclusive upon the accounting officer's approval.

**(2) Official Representation Funds** (*DoD Directive 7250.13*) are used to maintain the standing and prestige of the United States by extending official courtesies to guests of the Department of Defense. Guest authorization is strictly limited, as are the purchases that can be made using these funds to prevent abuse. See the Directive above for details.

**(3) CINC Initiative Funds** (10 USC 166a). The Chairman of the Joint Chiefs of Staff may provide funds to the commander of a combatant command upon the request of the commander for such purposes as contingencies, selected operations, humanitarian and civic assistance, military training and education to foreign countries, and other limited authorized activities. Funding limits may be found in paragraph (e) of 10 USC 166a.

**(4) Humanitarian and Civic Assistance (HCA)** - Earmarked (10 USC 401) funds are set aside by Congress for DoD activities in providing humanitarian and civic assistance.



## **8. Military Construction (MILCON):**

Congress provides annual funding for specified military projects in the *Military Construction Appropriations Act*. Military construction projects expected to exceed \$1.5 million are normally “specified.” Congress provides annual funding for minor construction projects, not specified in the conference report. Unspecified minor military construction projects are normally defined as those projects that are expected to cost \$1.5 million or less. However, an unspecified minor military construction project may have an approved cost up to \$3 million if it is to correct a deficiency that threatens life, health, or safety. Before beginning an unspecified minor military construction project that exceeds \$500,000, the service secretary must notify the appropriate congressional committees, and wait 21 days.

10 USC 2805 (c) permits O&M funds for construction projects costing less than \$1 million if the project is intended solely to correct a deficiency that threatens life, health, or safety. The threshold is \$500,000 if the project is for any other purpose. O&M funds may NOT be used to finance minor military construction in exercises coordinated or directed by the Joint Chiefs of Staff unless the structure is truly temporary in nature. Therefore, MILCON funds must be used if the construction will exceed \$500,000, or if the construction is not temporary in nature, regardless of the cost.

A Department Secretary may not use more than \$5 million of a Department's MILCON funds to finance overseas JCS-directed permanent construction during any fiscal year, 10 USC 2805(a)(2).

### **a. Damaged or Destroyed Facilities**

Department Secretaries may use unobligated O&M funds to finance a restoration, repair, or replacement project if the cost is \$500,000 or less.

Department Secretaries may use unobligated MILCON funds to finance a restoration



or replacement project if the cost is greater than \$1.5 million but must notify the appropriate congressional committees and wait 21 days.

**b. Emergency and Contingency Construction Authority**

Although not appropriations documents, the following three statutes allow for transferring appropriated funds to finance contingency or emergency construction operations.

**(1) Declaration of War or National Emergency, 10 USC 2808.** The Secretary of Defense may initiate MILCON projects that are necessary to support the armed forces in the event of a declaration of war or a declaration by the President of a national emergency. The SECDEF must, however, notify the appropriate congressional committees and may only use unobligated MILCON and Family Housing appropriations. On November 14, 1990, President Bush invoked emergency construction authority under 10 USC 2808 for support of Operation Desert Shield. See *Executive Order 12734* of November 14, 1990, 55 Fed. Reg. 48099.

**(2) Emergency Construction, 10 USC 2803.** The Secretary of Defense may fund a requirement if he/she determines that the project is vital to national security or the protection of health, safety, or the quality of the environment. Also, the secretary must notify the appropriate congressional committees and wait 21 days after notification before beginning the project. Only unobligated MILCON funds may be used to finance the project, and the secretary cannot exceed \$30 million in any fiscal year.

**(3) Contingency Construction, 10 USC 2804.** The Secretary of Defense must determine that waiting until the next appropriations act would jeopardize national security or national interest, must notify the appropriate congressional committees, wait 21 days after notification before beginning the project, and only use funds specifically appropriated for contingency construction. Congress provides an



annual MILCON appropriation specifically for contingency construction projects. Congress has also established an overseas contingency operations transfer fund. The purpose of this fund is to pay expenses directly related to known and ongoing overseas contingency operations. In general, a CCO can expect this to be used only after first exploring the use of Emergency construction funds.

## **9. Commanders Emergency Response Program (CERP)**

CERP funding is critical to SOF missions. USSOCOM CCOs often face CERP requirements in the course of their deployment. CERP funding is quite different from the traditional funding appropriations contracting professionals use in their CONUS assignments. The *FAR* does not apply to CERP contracts, although sound business arrangements and stewardship should govern these transactions. In order to meet these objectives, the execution of the CERP project must be fair, transparent and accountable IAW DoD 7000.14, Financial Management Regulation, Vol 12, Ch 27. The purpose, uses and limitations of the CERP are as follows:

### **a. Purpose**

- Enable commanders to respond to urgent humanitarian relief and reconstruction assistance by executing programs that immediately assist the local populace.

### **b. Uses**

- DoD 7000.14-R directs commanders to focus on urgent projects that will employ substantial numbers of local national workers. CERP funding can be used for goods or services when making best effort to identify/employ local national firms.
- Primary uses of the CERP include: Rapid reconstruction following combat operations, emergency repairs of critical facilities, critical infrastructure shortfalls that can be rapidly resolved, projects to reduce the risk of injury to the local populace, procurement of critical equipment to replace lost, stolen, non-repairable items or to establish critical community-essential services.





### **c. Limitations**

- All projects proposed for CERP funding must be coordinated with local/regional coordinators, civil affairs elements, contracting units and provincial reconstruction teams.
- Other Uses of CERP include water and sanitation projects, electricity, healthcare, education, telecommunications, civic or cultural activities, and condolence payments for local civilian loss.
- Specific Restrictions for CERP include anything directly or indirectly benefiting US/coalition armed forces, supporting security forces, providing entertainment, providing food used for meetings, or involving the following: weapons buy-back programs, other purchases of firearms or ammunition, rewards programs, removal of unexploded ordnance, duplication of services available through municipal governments, salaries, bonuses, or pensions of foreign military or civilian government personnel, and training, equipping, or operating cost of foreign security forces.
- Execution of the CERP project must be fair, transparent and accountable (*DoD 7000.14, Financial Management Regulation*, Vol 12, Ch 27).
- Fairness relates to competition of the requirement to the maximum practical extent based on the circumstances and environment.
- Transparency relates to adequately documenting the course of action taken to support the requirement. Accountability relates to crafting an enforceable agreement with adequate safeguards to meet the aims of the CERP project.

### **d. Guidelines**

(1) CCOs should work closely with subject-matter experts (SMEs) and commanders to ensure requirements are written clearly and reflect what the local market is able to provide.

(2) As the situation allows, CCOs should ensure requirements are made widely available to interested parties. As *FAR* Part 5 advertising is not required, CCOs may use local Civil Affairs units, Business Development Consultants (BDC)





(formerly known as Host Nation Business Advisors), local business centers, Chambers of Commerce, and prominent local citizens to identify potential offerors.

(3) Whenever practicable, CCOs should make results of the contracting process (who won, price, delivery terms) available to parties with legitimate interest in the outcome. Most importantly, project files should adequately document this project information.

(4) CCOs should ensure competition takes place whenever possible. While *FAR* Part 6 competition requirements do not apply, contracting officers should seek more than one independent offer (three is desirable) if practicable under the conditions of the project. Security and urgency dictate these conditions. Full documentation in the file is still required.

***\* CERP projects shall NOT be advertised for bid on web based portals\****

(5) CCOs should conduct a price analysis. Direct competition by independent offerors should normally form the basis for the price analysis; however, comparison to similar efforts or use of other appropriate methodologies may be used.

(6) CCOs should bargain where it makes sense; there are rare instances where it does not make sense to bargain. Exercise business judgment and seek to obtain a fair and reasonable deal for both parties under the conditions of the project.

(7) CERP solicitation and award documents shall prominently include appropriate notification regarding the contracts that are not *FAR*-based.

**Any contract awards resulting from this solicitation are NOT subject to the Federal Acquisition Regulation of the United States Government and are, therefore, not subject to the Contracts Disputes Act.**



#### **e. Key CERP Takeaways**

- Current CERP instructions are published in the respective AOR as part of the Money As A Weapon System (MAAWS) SOP.
- The CERP program is broad in scope and may be effectively utilized for rebuilding critical infrastructure (food distribution, utilities, transportation, economic, education, and other areas).
- CERP funds shall not be used for the benefit of US or coalition forces or for equipping/training of Iraqi/Afghan forces.
- CCOs should closely coordinate with their counterparts in J8 on FRAGOs related to thresholds and specific guidance, as the CERP

Program Manager resides in the J-8 resource management

organization in Iraq, and the CJ9/S9s plan the projects in Afghanistan.

- Specifically, CCOs should remain aware of critical thresholds:
  1. Threshold required for specific command project approval.
  2. Thresholds for warranted CCOs vs. Project Purchasing Officer.

#### **F. Delegated Contracting Authority**

##### **1. Contracting Officer Representative (COR):**

A qualified individual, appointed by the CCO, to assist in the technical monitoring and/or administration of a contract. A COR is most often employed in administration of more complex services, supply, and/or construction contracts. The COR is a valued member of the acquisition/contract administration team.

##### **Regulations governing CORs include:**

- DFARS 201.602-2, AFFARS 1.602-2-90, and DoD Directive 550.7R.
  - Mandatory periodic training sponsored by Contracting Office



- Optional self-paced training and information available on-line at  
<http://www.faionline.com>  
<http://www.almc.army.mil>

## **2. Contracting Officer's Technical Representative (COTR):**

A qualified individual, appointed by the CCO, to assist in the technical monitoring or administration of a contract. The COTR is a valued member of the acquisition/contract administration team.

### **a. Responsibilities and Authority for COR and COTR**

- Serve as a “functional representative” to assist the Contracting Officer in surveillance and management of complex contracts.
- Responsibility/authority to monitor all aspects of the day-to-day administration of a contract except issues that deal with “time and money.”
- Do not have the authority to make any commitments or changes that affect price, quality, quantity, delivery, or other terms and conditions of the contract.
- Perform duties specified in formal appointment letter by the Contracting Officer.
- Verify Contractor is performing the technical and management requirements of the contract IAW contract terms, conditions and specifications.
- Perform, or cause to be performed, all necessary inspections to determine whether a contractor is fulfilling obligations pertaining to quality and quantity.
- Verify that the contractor has corrected all correctable deficiencies.
- Perform acceptance for supplies, services and/or construction on behalf of the Government.
- Maintain liaison and direct communications with both the contractor and the KO.
- Monitor the contractor's performance.



- Notify the CCO of deficiencies observed during surveillance and recommend appropriate corrective action.
- Submit a report concerning the performance of services rendered under the contract.
- Perform or cause to be performed, property surveillance.

**b. Limitations of Authority for COR and COTR**

- Can NOT make any agreement with the contractor requiring the obligation of public funds (i.e., cannot sign a contract, including delivery orders, purchase orders, or modify a contract, or in any way obligate payment of funds by the Government);
- Can NOT encourage the contractor (by words, actions, or by a failure to act) to undertake new work or extend existing work beyond the contract period.
- Can NOT interfere with the contractor's management prerogative by "supervising" contractor employees or otherwise directing their work efforts.
- Can NOT authorize a contractor to obtain property for use under a contract.
- Can NOT allow government property accountable under one contract to be used in the performance of another contract.
- Can NOT issue instructions to the contractor to start or stop work.
- Can NOT order or accept goods or services not expressly required by the contract.
- Can NOT discuss acquisition plans or provide any advance information that might give one contractor an advantage over another contractor in forthcoming procurements.

**c. Appointment and Training**

CORs and COTRs must be nominated by the end-users' commander and trained and appointed by the CCO.



### **3. Field Ordering Officer (FOO)**

#### **a. Governing Regulations:**

Army *FAR* Manual No 2 Appendix E (Found on SOCOM CCO Disk under CCO/Army/afarsm2), USASOC OPFUND Policy, CJSOTF policy letters and DoDD 5500.7-R, Joint Ethics Regulation.

#### **b. Purpose:**

Just as CCOs, FOOs can be a strong force-multiplier for SOF units. *Army Regulation 715-30* lists various types of FOOs, with the Secure Environment Ordering Officers (SEOO) and simple Ordering Officers being the most important to SOF missions. A SEOO is focused on security, often operating within classified units. The general Ordering Officer is typically known as a FOO. FOOs purchase on-the-spot supplies and services using the Standard Form 44 (SF44).

#### **c. Policy:**

USSOCOM has the greatest FOO appointment authority within the DoD. *DFARS* 213.306 defines the utilization restrictions for the SF 44; however, USSOCOM has a standing, unexpiring *DFARS* Class deviation allowing USSOCOM Contracting Office Chiefs greater authority in appointing FOOs and authorizing their limitations. Per USSOCOM/SOAL-K Director of Procurement policy letter date August 6, 2001, and Policy Memo 01-01 dated March 26, 2001, all USSOCOM COCs may appoint FOOs with limits up to \$10,000 within the US and up to \$25,000 overseas. USSOCOMs class deviation only applies to operations within the USSOCOM procurement authority and does not include the Government Purchase Card.



**d. Guidelines:**

- “Two Arm Rule” applies to all FOO purchases. In other words, a FOO can not purchase any supplies or even 1 day of labor unless the following can be done:
- FOO can simultaneously grab the pay agent with one arm, vendor with the other, and turn his/her palm upward and immediately receive the supply or witness the initiation of service, limited to 1 day in execution.
- Professional liability: A Field Ordering Officer breaks the law when he/she purchases prohibited items or services or exceeds the \$2,500 (O&M / TIFF) (\$5,000 for QRF FOOs) threshold.
- Personal liability: A Field Ordering Officer can be held financially liable when he/she purchases prohibited items or services or exceeds the \$2,500 (O&M / TIFF) (\$5,000 for QRF FOOs) threshold.
- There are a number of prohibited purchases for FOOs to be aware of. CCOs should ensure proper training and frequent coordination occurs with FOOs within their AOR.

**e. Key Takeaways:**

- FOOs have “contracting authorization,” NOT “payment authority.
- FOOs can utilize other agency contracts but only USSOCOM funding
- FOOs must remain within scope-of-contract requirement.
- FOOs work for the CCO. A CCO can revoke warrant authority.
- FOOs must provide copies of all documentation for contract file.
- FOOs are still liable for documentation, warrant thresholds, funding restrictions.
- FOOs are required to provide full disclosure of actions and funding details. Provisional Reconstruction Teams (PRTs):

**f. Purpose:**

Provincial Reconstruction Teams (PRTs) are designed to help improve stability in Afghanistan and Iraq by increasing the host nation's capacity to govern, enhancing economic viability, and strengthening local governments' ability to deliver



public services, such as security and health care. PRTs are a means of coordinating interagency diplomatic, economic, reconstruction, and counterinsurgency efforts among various US agencies in Afghanistan and Iraq. PRTs are intended to be interim structures; after a PRT has achieved its goal of improving stability, it may be dismantled to allow traditional development efforts to occur.

- A PRT consists of military officers, diplomats, and reconstruction subject-matter experts—all working together to support reconstruction efforts in unstable states.
- PRTs were first established in Afghanistan late 2001.
- The projects can't indirectly or directly help coalition forces.

**g. Policy:**

- Following NATO's involvement in Afghanistan, command of some PRTs was transferred from the US to the nations under the International Security Assistance Force (ISAF).
- In US efforts, PRTs are managed through the United States Aid and International Development (USAID) program, which has many similarities to the CERP program.
- The PRT Commander can approve projects up to \$25,000. Projects include hospitals, electricity, roads, schools, drinking wells and canal construction projects. The projects can't be split up in phases to stay within funding limits and must be reviewed by JAG and coordinated with the local contracting unit.

**4. Project Purchasing Officer (PPOs)**

**a. Purpose**

- A PPO is similar to a FOO but is exclusively designated to spend CERP funding.
- PPOs act with authority to obligate the government for reconstruction projects, including various types of construction, economic improvements and even paying out condolence payments for battle damage.



- As explained above, the Commander's Emergency Response Program (CERP) was established to enable commanders to respond to urgent humanitarian relief and reconstruction requirements within their AOR by carrying out programs that will immediately assist the indigenous (local) population.

**b. Policy**

- SOCOM PPOs can spend up to \$200,000 depending on policy directives and CCO decision.





THIS PAGE INTENTIONALLY LEFT BLANK



## Chapter II. Strategic Alignment

### A. Synergistic Approach

Joint contingency contracting operations involve multiple stakeholders and multiple layers of communication and control. A CCO must be able to utilize the resources of these stakeholders in a synergistic manner—in other words, increasing the sum effective of all stakeholders over and above the results that one expert channel would bring. This section will discuss the various stakeholders and their role in garnishing a successful construction requirement.

Nowhere else is this synergy more important than in the construction requirement arena. A basic construction requirement touches almost every functional area on an installation or within an AOR. For instance, the security forces need to be concerned with pass, identification, and security concerns of workers accessing the base; military intelligence needs to be concerned with problems associated with the possible access to information while on the base, as well as any information they may be able to learn from the workers; finance needs to be concerned with the structure of payments for the job, be it incremental at progress points, local pick up, or wire-based; engineering needs to be concerned with the layout, design, stability, footprint, etc., of the infrastructure established on/near a deployed base; contracting needs to be concerned with the accountability and stewardship of tax payers' money and with the socio-economic implications of a project; the base commander needs to be concerned with command and control of personnel within his AOR, including contract workers on the base; medical personnel need to be aware of conditions of disease or injury associated with workers on the base and their responsibilities if construction workers off base are injured while associated with base-supported projects in the local area, etc.

These functional areas are staffed by joint service personnel with varying degrees of objectives, priorities, and command structures that often have contract



management concerns—either off the radar or at a low visibility level. Bringing these assets to the table and ensuring their awareness and support to contract-related concerns can better prepare all available resources to not only be prepared for unplanned events, but to provide for a more effective operation environment in which communication and integration of resources is fluid. These resources include both personnel and capital equipment/facilities. An example of this would be the close coordination of finance and contracting in paying activities. Finance may have certain requirements for contractors to get paid in cash—including face-to-face, secure transactions and/or established bank accounts in a particular region. If contracting personnel are aware of these requirements, they can better prepare the contractor at time of award to ensure completion of the necessary accounts or to help facilitate a secure location for face-to-face payments. Close coordination with finance will also provide an opportunity to discuss recurring bulk funding requirements in a legal manner. One such discussion that doesn't appear to have occurred, that the author recommends, is the use of synergy in bulk funding requirements in certain AORs. Finance, engineering, and contracting personnel should be able to consolidate and leverage certain requirements that can be easily forecasted. This consolidation could lead to decreased lead times of supplies and could reduce the acquisition cycle/procurement lead time needed to execute award of such requirements. Bulk funding also minimizes the number of accounting line options; this decrease, in turn, minimizes errors or violations in the appropriation of those various accounting lines.

Contracting involves multiple stakeholders—including the warfighter, financial management, contracting, engineering, and the contractor(s). These stakeholders' actions all contribute to a successful acquisition. No single person can cover all the various contracting processes nor provide the necessary deliverables, which include a defined requirement, statement of need, funding certification, a contract, contract modifications, award management, oversight of performance, and acceptance documentation (USA, p. 40). These actions take place during pre-award, award,



and post-award phases of contracting. The stakeholders play an integral role due to the inability of a CCO to be an expert in every subject area needing contract support.

## **1. Joint Acquisition Review Board**

The first layer of defense in preparing for and accurately certifying funding for appropriate use is the Joint Acquisition Review Board (JARB). This is a J4 board that validates requirements estimated to cost \$200,000 or more and that principally require O&M funding. It also validates requirements less than \$200,000 in specific areas including (but not limited to) engineer equipment, facilities, and LOGCAP (Aaron, 2005). At larger expeditionary bases, contracting personnel have a seat on this board; however, in smaller, more austere locations, a CCO may receive a requirement that was either validated through a JARB at a regional location, or simply certified by an on-scene finance representative. Per AARs on file with USSOCOM, CCOs operating within an AOR with a functioning JARB had less incidences of misuse of funds.

## **2. Engineering:**

For construction taking place on or around DoD installations in an expeditionary environment, the engineering corps is critical. Its members are the planners, designers, and overseers of construction projects and operate side-by-side with CCOs. Below is a summary of the key decision bodies for per the MAAWS briefing (Aaron, 2005).

### **a. Joint Facility Utilization Board**

J7 board that oversees requirements for construction and base camp development, including MILCON, minor construction using OMA, real-estate actions, and other engineering requirements.



**b. Facilities Engineering Team (FET)**

After review/validation by the JFUB, the requirement is approved by the Facilities Engineering Team (FET). Members of this team determine which contracting agency is appropriate for the work, SFO CCOs, local RCC, DCMA, USACE, USAID, or other organization (IG report, 2008).

**c. Joint Civil-Military Engineering Board (JCMEB)**

J7 board that validates CERP requirements greater than \$500,000 and recommends approval or disapproval to the appropriate approval authority for each respective AOR.

**B. Intra-Agency Coordination**

In addition to cross-functional cooperation, interoperability between USSOCOM CCOs and agencies such as DCMA, USAID, JCC I/A, and other cooperative agencies conducting contingency contracting in their AOR is a top concern.

The Gansler Report addressed the importance of synergy and documented numerous problems with expeditionary/splintered responsibilities in theater between key players such as AMC, ACA, LOGCAP, Army Corps of Engineers, JCC I/A, DCMA, CENTCOM, USAID, Department of State and many more (USA, 2007, p. 21). Furthermore, it noted that after looking at the entire landscape of acquisition issues in Kuwait, Afghanistan, and Iraq, it is evident that the problems experienced in an expeditionary environment are not due to one particular problem nor to an individual failure to perform, but rather arise because multiple agencies and departments have failed to fully recognize or comprehensively address the significance of the shifting challenges in the post-Cold War environment.



## C. Operational Leadership

CCOs and their other supporting functions must adapt to low Manning and other workforce changes within the battlespace. A successful way of doing this is upfront communication among leadership. This includes military and civilian leaders—all associated members of the acquisition team. As a contracting professional, a CCO is tasked with supporting the operational requirements of the warfighter while adhering to public policy objectives. This involves a delicate balance between hard-line bureaucracy and immediate ad hoc behavior to accomplish a given tactical mission. Contingency Contracting is a learning-intensive field; however, it also demands a great deal of flexibility and adaptability from its members. This flexibility and adaptability can't be learned in a classroom. Therefore, the most opportune way to build the force is by bringing CCOs into the fight. As a support function, CCOs may not have had experience working closely with operational frontline warfighters. CCOs must understand the needs of their customers and maintain situational awareness of field commanders' priorities. This involves taking the lead in pro-active engagement with customers and responsible support of these customers. Often, this means a CCO must educate the customer on the legal and performance ramifications of why behaving in a certain manner may be advantageous or dangerous to personnel or performance. The CCO is in a position to find creative ways to get the customers what they need, but is also in a position of authority and accountability that requires him/her to be the lead decision agent, program manager, and business advisor.

## D. Integration of Contracting

In order for contracting to best support customers, CCOs and contracting leadership must be integrated into the planning process as early as possible. This begins with initiating a new "phase zero" into the current documented phases of contingency operational planning. This new phase brings contracting



personnel to the table to discuss force movements and associated logistical concerns in which contracting can support. This can be done at all levels of command; however, the concept should flow down from the strategic-level planners in order for tactical commanders to have motivation to engage with contracting assets in theatre.



## Chapter III. Pre-Award

### A. Acquisition Planning

*FAR* Part 7.101 defines Acquisition Planning this way: the process by which the efforts of all personnel responsible for an acquisition are coordinated and integrated through a comprehensive plan for fulfilling agency needs in a timely manner and at a reasonable cost. Depending on various thresholds, these plans can be formal and written or informal and only loosely documented. Even if a project does not need a formal written plan, some type of acquisition planning should be done and reflected in the contract file. This can include notes on planning meetings, telephone conversations, e-mail interaction, market research, etc.

Contracting Considerations a CCO should consider during acquisition planning:

- Market research (capabilities and resources)
- Timeline of performance (weather conditions and mission objectives)
- Design Build vs. Design-Bid-Build
- Contract Method
  - Sealed Bid or Negotiated
  - LPTA vs. Best Value
- Any Special Clauses or Special Solicitation Provisions

There are lots of issues to consider during acquisition planning. A CCO must determine if design is going to be done prior to award or as part of the overall contract. Most agencies perceive a “design build” type contract as one in which the same firm designs and builds the project. The *FAR* gives guidance on this and calls this type of contract a “turn key procedure,” but most agencies call





it a design-build contract. *FAR* 36.104 allows other acquisition procedures for Design-Build.

When discussing the type of contract, *FAR* Part 16.101 states there are two broad categories, Fixed Price and Cost Reimbursement. However, these categories include different vehicles to get the work done. The most frequent vehicle type for USSOCOM construction projects is a fixed-price contract awarding using *FAR* Part 15 procedures.

## B. Establishing Roles and Responsibilities

The CCO must establish the expectations of the acquisition team members early and ensure that the appropriate experts and/or end-users are integrated into the planning process. This begins with instituting a new “phase zero” into the current documented phases of contingency operational planning. Contracting leadership plays an integral role in setting these expectations. This can be done at all levels of command; however, if strategic level planners are having the discussion, tactical commanders will have more motivation to engage with contracting assets in theatre or otherwise available for reach-back planning. The strategic importance of contracting speed and the impact contracting can have on the battlespace needs to be stressed more aggressively to foster a proactive engagement of operational leaders with contracting leadership. Once the government team members have a clear set of expectations and the requirement elements have been discussed, the team must craft the expectations for the contractor. In some cases, the CCO may need to brief customers on the processes for submitting a Purchase Request and Commitment (PR&C) or even a run down of “Contracting 101” basics to help them understand how the CCO can enable their mission.



## C. Requirements Definition

In order for a CCO to be effective, the “requiring activity” must adequately define its requirement. This is easier said than done. There are several key concerns a CCO must discuss with customer when helping them develop a requirements package. For contingency construction, the requirement is often defined within a Statement of Work (SOW), and the estimated price elements are annotated on an Independent Government Cost Estimate (IGE). The customer must understand both the SOW and IGE before moving forward. Development of a SOW document is absolutely critical and is one of the most important parts of the solicitation and subsequent contract. Many contractors in a deployed environment are only concerned with two things: how much the contract is for and what are they being expected to perform. This, of course, doesn’t mean that a CCO shouldn’t focus on the other regulatory and legal requirements associated with the contract, but if the performance elements aren’t adequately defined, there’s a significant chance that the contract will not be successful. Crafting a SOW is the primary responsibility of the requesting unit/agency. However, individuals in these agencies are generally not acquisition professionals, nor are they trained in effective requirement-generation procedures and concepts. Thus, the CCO is vital to facilitating the crafting of an effective SOW. Attached are a few samples of common requirements experienced by construction CCOs. These samples should be used as guidance in preparing a SOW and should not be used as blind templates, as they must be tailored to fit the specific circumstance of the customers requirement. To help break down, understand, and articulate technical jargon effectively to their customers, CCOs may need to review fundamental construction terminology used in industry and conversions for basic units of measure.



Below are a few common construction projects and associated sample SOWs:

**Latrine and Shower Trailers**

**Guard Towers**

**Utilities installation**

**B-Hut**

**Road Work**

**Sea-Hut**

**Water Well and Pump House**

**Brick and Mortar billets**

#### D. Oversight Program

Oversight of contracts is critical to the success of military operations. This oversight not only involves contracting personnel but also other functional areas—most notably the end-user and/or engineering expert for the respective requirements. A CCO should develop an aggressive policy that builds commitment and accountability for CCOs, end-users, and inspectors in the field. A contract is only as good as its outcome. If a CCO does everything right in developing the contract document and subsequent statement of work, yet the government provides insufficient oversight and coordination during the performance of the contract, the efforts in planning and development of the contract are void. CCOs and their leadership must engage with operational units to stress priority of oversight and accountability. This begins with a strong training program for CORs, in which CCOs actively and aggressively brief and enforce the authorities (and lack of authorities) delegated to the CORs (or similar oversight professional, SME, COTR, PERT, FOO, PPO, etc). If CORs do not fulfill their duties, they must be replaced.

Below are two common *FAR* clauses that define basic inspection procedures. These do NOT waive the requirement to nominate, appoint, and train CORs for oversight. Inspection of Construction *FAR 52.246-12*

- Requires contractor to allow the government to inspect all work and for the contractor to correct any defective work prior to acceptance and payment.



- Ensures government gets what it paid for.
  - Risk of conformance is placed completely on the contractor.
- 3. Material and Workmanship *FAR 52.236-5***
- Requires that a contractor shall
    - Use suitable-grade, new materials on construction projects.
    - Obtain government approval of machinery/equipment to be used.
      - CCO must establish a submittal process for these documents.
    - Perform in a skillful and workmanlike manner.
    - Allow the Contracting Officer to insist on the removal of unqualified or objectionable employees that pose undue risk to work completion.

#### E. Solicitation Documents

Once the requirement has been adequately defined and an oversight program has been agreed upon, the CCO must incorporate the requirement into a solicitation document. Below are common documents associated with this phase. The CCO must tailor the exact terms, conditions, and instructions within a solicitation to the scope and magnitude of the requirement.

##### **PR&C Document**

##### **SF 1442**

##### **Construction RFP**

##### **Determinations and Findings (D&Fs)**

##### **Construction File Index**

##### **Construction Contract**

##### **Construction Clause Matrix**

##### **Construction Checklist**

##### **Delivery Order File Index**

##### **Abstract of Offers SF 1419**



## F. Key Construction Clauses

### 1. **Payments under fixed-price construction (FAR 52.232-5)**

- Allows for monthly payments based on progress.
- Amount requested by contractor must be documented and supported.
- States that the contractor shall refund any unearned amounts.
- Government may hold retainage for delayed/incomplete work.
- Total remaining amount due will be paid upon approval of final invoice.

### 2. **Retainage (FAR 52.232-5, continued)**

- When satisfactory progress has NOT been made.
- Retain from previously withheld and future payments.
- Only withhold amount that is adequate for government protection.

### 3. **Performance of work by the contractor (FAR 52.236-1)**

- Contractor required to perform a certain percentage of on-site work.

### 4. **Differing site conditions (FAR 52.236-2)**

- Contractor shall promptly, and before the conditions are disturbed, notify CCO of any special conditions that it believes are beyond the scope of the contract.
- Shifts risk to the government to eliminate or pay for unexpected conditions.

### 5. **Site investigation and conditions affecting the work (FAR 52.236-3)**

- Ktr acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions.



**6. Material and workmanship (FAR 52.236-5)**

- All equipment and material shall be new and of the most suitable grade for the purpose intended. All work under this contract shall be performed in a skillful and workmanlike manner.

**7. Superintendence by the contractor (FAR 52.236-6)**

- Contractor will have approved superintendent on-site at all times.

**8. Permits and responsibilities (FAR 52.236-7)**

- All permits and licenses must be completed by the contractor.
- Contractor accountable for damage to persons/property due to fault or negligence.

**9. Other contracts (FAR 52.236-8)**

- Details issues concerning working with other contractors around the site.

**10. Protection of existing vegetation (FAR 52.236-9)**

- Contractor is required to protect and if necessary replace existing vegetation.

**11. Operation of storage areas (FAR 52.236-10)**

- Contractors can build/have storage facilities at their expense.
- Contractor must correct any damage to surrounding facilities or ground.

**12. Use and possession prior to completion (FAR 52.236-11)**

- Government can take possession of partially completed work, but the CCO must provide a list of remaining work or corrections required. Contractor shall be relieved of the responsibility for the loss of or damage to the work resulting from the Government's possession or use.
- Commonly referred as "Beneficial Occupancy."



- Government has right to occupy any completed to partially completed area.
- CCO must notify contractor in writing of accepted area and any deficiencies.
- All risk on the government (except for latent defects or fraud).

**13. Cleaning up (FAR 52.236-12)**

- Requires contractor to keep working area clean at all times.

**14. Accident prevention (FAR 52.236-13)**

- Requires safety measures. Must be in accordance with the US Army Corp of Engineers Safety and Health Requirements Manual EM385-1-1. Allows the Government to stop work for noncompliance issues with no equitable adjustment after written notice.

**15. Availability and Use of Utility Services (FAR 52.236-14)**

- We'll make available; contractor will pay.

**16. Pre-construction Conference**

- Precon will be held to discuss project administration and coordination.
- Creation of a pre-con checklist is recommended.

The *FAR* prescribes that the contractors' labor requirements will be reviewed; furthermore, IAW *DFARS* 222.406-1 requires discussing other contract requirements like subcontractor requirements/restrictions, safety and security concerns, scheduling, submittals, liquidate damages, invoice and payment considerations, existing utilities, and any specific concerns associated with performing under the contract terms and conditions. Notifications to the contractor should include date, time, location, required attendees, and an agenda.

Below is a suggestive list of attendees. Each member brings a required expertise that will assist in getting the job done well. Projects will vary as to exactly which participants should attend and what requirements will be discussed.



- Government
  - Contracting Officer, Contract Specialist, COR, COTR, SME, Project manager/engineer(s), end-user, customers, fire, security, safety, etc.
- Contractor
- Company officer/Director, project supervisor, safety representative, quality control representative, major subcontractors, etc.

**17. Schedules for construction contracts (FAR 52.236-15)**

- Detailed construction schedule is required within 5 days of commencing work.
- Schedule updates shall be provided throughout the project.

**18. Specifications and drawings for construction (FAR 52.236-21)**

- Contractor shall keep a copy of drawings/specifications on-site at all times.

**19. Site visit (Construction) (FAR 52.236-27)**

- Contractors are urged/expected to inspect site where the work will be performed.

**20. Compliance with local labor laws (DFARS 252.222-7002)**

- Contractors are required to comply with local laws and regulations regarding labor.

**21. Suspension of Work (FAR 52.242-14)**

- Allows CCO to suspend work for the convenience of the government.
- Contractor entitled to cost adjustment.
- Gives government time to make decisions, investigate progress, respond to questions, plan or incorporate associated work under another contract, etc.
- No allowance for profit or additional time.





- Contractor must show increased costs were caused by the suspension.

## **22. Variation in Estimated Quantities (*FAR 11.702*)**

- Allows for adjustment in unit-priced items when quantity variation exceeds 15%.
- Relieves contractor of risk from rough or inaccurate government estimates.

## **23. EM 385 – Safety and Health Requirements**

- Provides guidance on safety procedures and practices.
- Required on contracts in Iraq and Afghanistan.

Construction safety is highly regulated in the US, but not in many other countries. A CCO should contact the US Army Corp of Engineers and/or Joint Contracting Command for other current recommended safety clauses for respective theatres.

## **24. Human trafficking and forced labor**

Any contract may be terminated if the contractor or any subcontractor engages in trafficking in persons or uses forced labor to complete the contract. Contractors residing on military installations are required to comply with the following provisions: 1) Contractors shall only hold employee passports and other identification documents for the shortest period of time reasonable for administrative processing purposes. 2) Contractors shall provide all employees with a signed copy of their employment contract—in English as well as in the employee's native language—that defines the terms of their employment and compensation. 3) Contractors shall not utilize unlicensed recruiting firms charging illegal fees. 4) Contractors shall be required to provide adequate living conditions (sanitation, health, safety, living space) for their employees. Fifty square feet is the minimum acceptable square footage of personal living space per employee. Upon contractor's written request, contracting officers may grant a waiver in writing for



cases in which the existing square footage is within 20% of the minimum, and the overall conditions are determined by the CCO and installation engineer to be acceptable. 5) Contractors shall comply with international laws regarding transit/exit/entry procedures and the requirements for work visas. Contractors shall follow all Host Country entry and exit requirements. Contractors have an affirmative duty to advise the Contracting Officer if they learn of their employees violating the human trafficking and inhumane living conditions provisions. Contractors are advised that CCO and/or their representatives will conduct random checks to ensure contractors and subcontractors at all tiers are adhering to the law on human trafficking, humane living conditions and withholding of passports.

## G. Drawings

### 1. ***FAR 52.236-21* requires**

- Specifications & Drawings must be available on-site.
- If contractor-derived, drawings must be submitted for Government Approval prior to proceeding. Shop drawings provide additional detail as to how the contractor intends to complete a work item. Review and approval prior to start of work will mitigate the government's and the contractor's risk by ensuring designs that properly conform to the requirement.
- The end-users and their respective engineer are responsible for preparing and providing drawings associated with construction requirements. However, as a matter of customer service and expediency, below are several drawing samples for common construction projects in a contingency environment. These are provided only as samples and should be approved by the appropriate engineer before incorporating into a solicitation.

#### **Barriers**

#### **Drainage Culverts-Headwalls**

#### **B-Huts**

#### **Chapel B-Huts**

#### **Water Well and Pump House**

#### **(Gravel) Road Work**

#### **Leach (waste) Field**

#### **Guard Tower**



## H. Evaluation Procedures

### 1. **Decide Which Process:**

- Tradeoff Process
- Lowest Price/Technically Acceptable Process

### 2. **Develop evaluation factors & sub-factors to include:**

- Cost or Price,
- Past Performance
- Technical evaluation (management, professional qualifications, specifications, etc.)

### 3. **When analyzing these issues, the team should consider the following:**

- Is price the most important issue?
- What time constraints exist?
- Are requirements extremely technical in nature?
- What trade-off factors are acceptable to the government?

## I. Source Selection

### 1. **References**

- All of *FAR* Part 15
- *FAR* 3.104 (Source Selection Definitions)
- *FAR* 12.303 (Commercial Items)
- *FAR* 52.212-1 (Instructions to Offers)
- *FAR* 52.212-2 (Evaluation Commercial Items)
- *AFFARS* 5115.101 (Best Value)
- *AFFARS* 5315.303 (Source Selection Authorities)



- AFFARS 5315.305 (Evaluation Factors/Sub-factors)
- AF Contracting SAF/ACQ
  - <https://www.afmc-mil.wpafb.af.mil/HQ-AFMC/PK/pkp/polvault/guides/sspguide.doc> AFMC Contracting SSDD Guide
  - [https://www.afmc-mil.wpafb.af.mil/HQ-AFMC/PK/pkp/polvault/guides/ssddguide\\_nov04.doc](https://www.afmc-mil.wpafb.af.mil/HQ-AFMC/PK/pkp/polvault/guides/ssddguide_nov04.doc)

## 2. Key Takeaways

- The acquisition team must determine the best method of source selection based on the complexity of the requirement and risk level of the government.
- The *FAR* provides for flexibility to be employed in building the solicitation to match the needs and risk level of the government. However, *the evaluation and selection process must be transparent and easily understood/justified.*
- Even if a formal Source Selection Plan is not required, the Source Selection Authority (SSA) should still document the establishment of the Source Selection team and approval of the evaluation factors.
- See *FAR* 7.102, *DFARS* 207.103, and *AFFARS* 5307.104-92 for dollar thresholds and the appropriate formats to use.



THIS PAGE INTENTIONALLY LEFT BLANK



## Chapter IV. Award

### A. Documentation

1. **Technical Evaluations**
2. **Abstract**
3. **Price Reasonableness**
4. **Determinations and Findings**
5. **Progress Schedule (*FAR 52.236-15*)**

CCOs and their end-users should establish a milestone-based progress schedule for construction projects based on organizational goals and realistic expectations of performance and circumstances on the ground. Requires contractor to submit a practicable schedule that is reasonable, feasible & obtainable. Contract case law supports that the approved schedule becomes part of the written record. Such a schedule provides the government customer with tools to measure progress and remedies if the contractor falls behind schedule.

6. **Notice to Proceed**

### B. Distribution

Once a contractor is selected, a CCO wants notification to be fair and transparent to both the awardee and the unsuccessful offerors. However, in certain security conditions, it may not be safe to announce the awardee to the public. A CCO must use caution and common sense when distributing the contract. In some environments, the contractor may need to access the base to physically pick up the contract and discuss issues surrounding the performance, schedule, etc. In other situations, e-mail may be the best option to avoid travel and contractor appearance on-site.



THIS PAGE INTENTIONALLY LEFT BLANK



## Chapter V. Post Award-Contract Administration



### A. Safety

The main reasons for construction-related accidents are carelessness, technical faults, inappropriate use of tools, inappropriate reaction by workers, abuse of drugs or alcohol, and most important—no proper awareness about potential sources of accidents. In a deployed environment, the local customs and behavior of contractors may not be as safety conscious as those in a CONUS environment. Knowledge regarding the sources of potential and predictable accidents can go a long way towards preventing them. All government personnel should be aware of construction-site safety concerns. However, the CCO and all related acquisition team members must identify and correct safety concerns. Below are a few helpful hints to prevent accidents.

- Only professionals should install electrical and plumbing items.





- No electrical wires should be allowed to lie free on the ground.
- Persons without a valid license should not be allowed to drive any vehicle.
- No fire shall be made at the construction site.
- No ladder with structural default should be used.
- Ladders should be placed in an out-of-the-way location when possible, so people do not have to walk underneath them.
- When going up or down a ladder, contractors should always face the ladder.
- Discarded timber/lumber should be checked for nails or splintered wood.
- Scaffolding work should be strong and affixed to a secure surface.
- Scaffoldings need to be checked every day by the contractor's supervisor.
- Openings in the ground should be marked and protected.
- Vertical steel bars (rebar) that stick out of concrete should never be left exposed.
- Proper lighting arrangements must be in place for night work and/or construction-site exposure during nighttime hours.
- Workers should wear clothing and protective gear as appropriate for the project.
- Storage of explosive and health-hazardous materials should not be on-site.
- Bricks or blocks shall not be piled up higher than one meter.
- Material such as steel bars, timber, sand, cement should be secured at end of each day.
- A toilet should be provided for the construction workers.



- An official resting-place protected from rain/sunlight should be established on-site.
- Clean drinking water should be available.

## B. Site Visits

- CCOs and their representative (COR, COTR, SME, etc.) should conduct periodic scheduled and unscheduled site visits of the worksite throughout the life of the contract. Each of these visits should be documented. Though no specific format is required for such documentation, each organization often has a standardized site visit document.
- PRTs, PPOs, and FOOs should also conduct site visits of their contractors.
- Any deficiency or concern should be documented and addressed immediately with the contractor. The CCO and contractor should then agree upon a responsible remedy.
- All personnel are authorized to stop a contractor from performing in a dangerous manner. However, only the warranted individual (CCO in most cases) can direct the contractor to adjust the schedule or performance requirements from the original contract.

## C. Remedies for Change

### 1. Changes Clause **FAR 52.243-4**

#### a. Policy

- Establishes authority to make changes within the general scope of the contract.

#### b. Purpose

- Gives government flexibility and compensates contractor for additional work.

#### c. Highlights

- Contractor must give written notification within 20 days of perceived change.



- No adjustments can be made after final payment.
- This is the most abused clause in construction contracting.
- d. **The Contracting Officer may, at any time, make changes in the work within the general scope of the contract, including changes:**
  - In the specifications (including drawings and designs),
  - In the method or manner of performance of the work,
  - In the Government-furnished facilities, equipment, materials, services, or site, or
  - Directing acceleration in the performance of the work.
- e. **If any change under this clause causes an increase or decrease in the Contractor's cost or time, the CCO shall make an equitable adjustment and modify the contract in writing.**
- f. **A contract modification under the changes clause can be either bilateral or unilateral.**

## 2. Differing Site Conditions *FAR 52.236-2*

- a. **Policy**
  - Requires KTR to notify GOV of any differing site conditions—promptly and before conditions are disturbed.
- b. **Purpose**
  - Shifts risk to GOV and eliminate bid contingencies.
- c. **Categories**
  - **Type I:** Subsurface or latent conditions which differ from those on the plans or in the contract documents—for example, when a contractor encounters lead paint on a demolition contract that states the paint contains no lead.



- **Type II:** Physical conditions which differ materially from those ordinarily encountered—for example, when a contractor discovers an underground fuel storage tank, not shown on the drawings, while performing excavation for a new building.
  - d. **Follow same procedure as described for the changes clause.**
  - e. **Exculpatory language**
- Exculpatory language (which should be avoided) is any language the Government tries to include in any contract, non-statutory, that attempts to mitigate or relinquish any liability the government may have concerning the conditions present at a project. For example, the Government knows the soil conditions at the facility are questionable, or that the Government does not know what underground situations are present. If, in the contract, the Government places language much to the effect, “there is no representation of existing conditions and the Government is hereby relieved of all liability regarding the situations present,” and the contractor has signed the contract, this language is considered exculpatory and unenforceable.

### 3. **Constructive Changes**

- a. **Definition**
  - Unauthorized change ordered by the government affecting scope of work, money, or time. Contractor may be entitled to extra time or money depending on situation.
- b. **Change Element—**
  - Did performance extend beyond minimum standards of the contract?
- c. **Order Element—**
  - Did the Government by words or deeds require performance beyond requirement?
  - Constructive changes can occur for many reasons:
    - Defective specifications
    - Differing interpretation (most common type)



- Failure to cooperate
- Over-inspection
- Failure to disclose information
- Acceleration
- Late delivery of Government-furnished Property (GFP)

#### **4. Field Change**

- Minor Changes in the Project
- No Change in Cost, Scope or Time
- Both Parties Must Agree
- Document Field Change
- Government representatives must be careful when directing field changes. A minor change now may create a situation that will become a major change in the future.
- Example: Electrical outlet in the wall is moved 2 feet to the left.

### **D. Progress Monitoring**

#### **1. Types of Delays**

##### **a. Contractor:**

- Due solely to fault/ negligence of contractor
  - FAR 52.236-15 Schedules
  - No time or money provided by the government
  - Example: Contractor ordering the wrong materials

##### **b. Government - Delay:**

- Cause can be linked directly to the government
  - FAR 52.249-10 Default



- Time and or money may be provided by the government
- Example: Government not reviewing submittals
- c. Excusable:**
  - Beyond control of the contractor
    - FAR 52.249-10 Default Unforeseeable Delays
    - FAR 52.249-14 Excusable Delays (Cost contracts)
    - Only time provided to the contractor
    - Example: Above-average rainfall, natural disaster, etc.
- d. Concurrent:**
  - Combo of Other Three Delays Occur at the Same Time

## 2. Documentation

- a. Government personnel (COR, COTR, etc.) should keep written record of:**
  - What is going on?
  - How long it has been going on?
  - Why it is going on?
  - What impact does it have?
  - What percent (time/dollar) of the work is completed during each agreed-upon milestone reflected in the progress schedule?
  - CCO must include formal progress reports/schedules along with summaries of issues and concerns in the contract file.
- b. Formats for these records can include:**
  - Daily reports
  - Meeting minutes
  - Schedule reviews



- Photos and videos
- Other documents

CCOs should continually analyze construction project progress and how any changing conditions may require another look at the schedules to determine if there is any time due the contractor, what type of delays have been encountered, if any, and if the government is due any liquidated damages. In order to make these decisions, there must be substantive documentation to support those decisions. Although the engineer and/or SME is responsible for this oversight, the CCO should play a pro-active and aggressive role in ensuring that adequate documentation and communication is occurring, as such documentation is critical..

It is highly recommended that CCOs maintain regularly scheduled construction progress meetings with associated contractor and government personnel. These meetings should include discussions about ongoing schedule milestones, submittal approvals/disapprovals, quality and safety concerns, potential economic adjustments or other modifications, etc. These meetings may be weekly, bi-weekly, or monthly depending on the period of performance. CCOs should encourage partnering between the contractor and government such to allow for a win-win relationship. However, no changes should ever be “off the record.” Shared risk is important to building an effective partnership. However, there must also be equally shared responsibilities.

## E. Invoices

### 1. **Payments Under Fixed-Price Construction (FAR 52.232-5)**

- Allows for monthly payments on progress.
- Amount requested must be supported by contract inspection terms.
- Only when satisfactory progress is not being made may the CCO retain any amounts allowed by the construction payments clause. Any retainage should be documented in the file as the reason and amount retained.



## **2. Reasons for Withholding**

- Failure of the contractor to submit timely documentation/submittals .
- Liquidated damages (performance).
- Unearned amounts previously paid in error.

If a contractor performs, is paid, and the work is later discovered as nonconforming, the amount paid for the nonconforming work is “unearned” and should be withheld from any subsequent invoice until the contractor has corrected the situation. The contractor could be subject to interest charges for unearned amounts.

## **3. Format**

### **a. No specific format but must include**

- Date
- Contract Number
- Contractor Company Name
- Contractor Representative Name/Signature
- Amount requested
- Invoice Number

## **F. Terminations (SOFARS 56.49)**

### **1. Authorization for Termination**

### **2. Termination for Default**

- Show cause
- Cure Notice





### **3. Termination for Convenience**

#### **G. Final Actions**

##### **1. Punchlist(s)**

CCOs should conduct an initial “walk through” with end-users, engineers, CORs, COTR, and/or SMEs as applicable. The CCO should then list any item(s) not conforming to the specifications or statement of work. This list typically includes minor items; however, any item noted must be corrected by the contractor prior to acceptance and final payment by the government.

##### **2. Beneficial Occupancy (FAR 52.236-11):**

This policy is exercised by exception due to operational needs. It is always best for a CCO to wait until the project is complete prior to taking possession of the facility. The CCO should issue a Beneficial Occupancy or Turnover letter to both the contractor and facility management base personnel.

##### **3. Warranty**

Contractor is required to warrant that all work conforms and is free of defect. This guarantee must be in contract or warranty documentation, whether warrant period is one year from final acceptance or one year from possession. Contracting personnel must keep a copy in the file and supply warranty information to the customer/user.

##### **4. Release of claims:**

This release is required upon the completion of work and final payment to the contractor. The contractor releases the government from all liabilities of future payments or claims associated with the contract.



## **5. Final documentation Required**

- All manuals, diagrams, piping layouts supporting new equipment/facilities
- Documentation and listing of equipment covered by warranty
- Technical test results for equipment
- All specialized keys, handles, tools relating to new work
- As-builts (revised drawings reflecting work performed under contract)

## **6. CCO personnel turnover issues**

- Include applicable updates in continuity folder
- Closeout contract (originals go to CFSOCC Chief of Contracting)
- Turnover open contract files to DCMA or rotating CCO
- Submit After Action Report to USSOCOM staff

## **H. Conclusion**

It is important for USSOCOM CCOs to have a strong understanding of the Operational framework in which they will be working. This framework is often more dynamic and streamlined than a typical CCO deployment, yet responsible, ethical, and compliant behavior is still required. When operating with a USSOCOM warrant, CCOs must be conscious of the unique funding policy, as well as a CCO's relationship with operators and engineers on the ground who may require certain delegated contracting responsibilities. Oversight and support of personnel with these delegated responsibilities is challenging and often complex, yet necessary. CCOs can increase their ability to effectively communicate with and support engineers through a fundamental understanding of construction terminology and concepts.

Strategic alignment of leadership and cross functional/agency resources is crucial to creating and maintaining a synergistic approach to joint operations. CCOs



are responsible for operating within a multi-functional, multi-agency environment—an environment in which they will be held responsible for the actions of personnel, whether they have operational control over those personnel or not.

Planning before and during the traditional pre-award phase of a contingency has drastic effects on the outcome of contractual agreements. The CCO must facilitate this planning, but the requiring activity has to take the CCO's guidance and prioritize accordingly.

Once a contract is awarded in a contingency environment, a CCO must take care to ensure fair treatment and transparency occurs, while ensuring current security conditions are always given top priority. Operations tempo is generally twice as intense (with half the manning) as contracting at a home station, yet CCOs must still adequately track, manage and organize contract awards.

Post-award is often times referred to as “contract administration.” This area of responsibility is often left as a low priority for CCOs due to operations tempo, manning, and various other distractions. This should NOT be a low priority area. The conducting of responsible and timely contract administration is often the difference between mission accomplishment and additional, unnecessary challenges on behalf of the contractor, CCO, and/or end-users. Just like in any other contracting environment, many problems in a contingency theatre can be solved quickly with proper communication, adequate oversight, and conscientious documentation.



## List of References

General Services Administration, Department of Defense, National Aeronautics and Space Administration. (2005, March). *Federal acquisition regulation (FAR)*. Washington, DC: Author.



THIS PAGE INTENTIONALLY LEFT BLANK



## 2003 - 2010 Sponsored Research Topics

### **Acquisition Management**

- Acquiring Combat Capability via Public-Private Partnerships (PPPs)
- BCA: Contractor vs. Organic Growth
- Defense Industry Consolidation
- EU-US Defense Industrial Relationships
- Knowledge Value Added (KVA) + Real Options (RO) Applied to Shipyard Planning Processes
- Managing the Services Supply Chain
- MOSA Contracting Implications
- Portfolio Optimization via KVA + RO
- Private Military Sector
- Software Requirements for OA
- Spiral Development
- Strategy for Defense Acquisition Research
- The Software, Hardware Asset Reuse Enterprise (SHARE) repository

### **Contract Management**

- Commodity Sourcing Strategies
- Contracting Government Procurement Functions
- Contractors in 21<sup>st</sup>-century Combat Zone
- Joint Contingency Contracting
- Model for Optimizing Contingency Contracting, Planning and Execution
- Navy Contract Writing Guide
- Past Performance in Source Selection
- Strategic Contingency Contracting
- Transforming DoD Contract Closeout
- USAF Energy Savings Performance Contracts
- USAF IT Commodity Council
- USMC Contingency Contracting



## **Financial Management**

- Acquisitions via Leasing: MPS case
- Budget Scoring
- Budgeting for Capabilities-based Planning
- Capital Budgeting for the DoD
- Energy Saving Contracts/DoD Mobile Assets
- Financing DoD Budget via PPPs
- Lessons from Private Sector Capital Budgeting for DoD Acquisition Budgeting Reform
- PPPs and Government Financing
- ROI of Information Warfare Systems
- Special Termination Liability in MDAPs
- Strategic Sourcing
- Transaction Cost Economics (TCE) to Improve Cost Estimates

## **Human Resources**

- Indefinite Reenlistment
- Individual Augmentation
- Learning Management Systems
- Moral Conduct Waivers and First-term Attrition
- Retention
- The Navy's Selective Reenlistment Bonus (SRB) Management System
- Tuition Assistance

## **Logistics Management**

- Analysis of LAV Depot Maintenance
- Army LOG MOD
- ASDS Product Support Analysis
- Cold-chain Logistics
- Contractors Supporting Military Operations
- Diffusion/Variability on Vendor Performance Evaluation
- Evolutionary Acquisition



- Lean Six Sigma to Reduce Costs and Improve Readiness
- Naval Aviation Maintenance and Process Improvement (2)
- Optimizing CIWS Lifecycle Support (LCS)
- Outsourcing the Pearl Harbor MK-48 Intermediate Maintenance Activity
- Pallet Management System
- PBL (4)
- Privatization-NOSL/NAWCI
- RFID (6)
- Risk Analysis for Performance-based Logistics
- R-TOC AEGIS Microwave Power Tubes
- Sense-and-Respond Logistics Network
- Strategic Sourcing

### **Program Management**

- Building Collaborative Capacity
- Business Process Reengineering (BPR) for LCS Mission Module Acquisition
- Collaborative IT Tools Leveraging Competence
- Contractor vs. Organic Support
- Knowledge, Responsibilities and Decision Rights in MDAPs
- KVA Applied to AEGIS and SSDS
- Managing the Service Supply Chain
- Measuring Uncertainty in Earned Value
- Organizational Modeling and Simulation
- Public-Private Partnership
- Terminating Your Own Program
- Utilizing Collaborative and Three-dimensional Imaging Technology

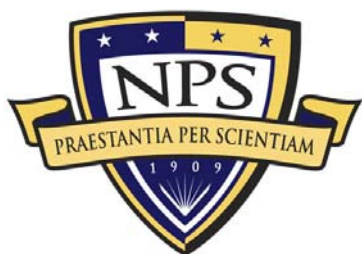
A complete listing and electronic copies of published research are available on our website: [www.acquisitionresearch.org](http://www.acquisitionresearch.org)





THIS PAGE INTENTIONALLY LEFT BLANK





ACQUISITION RESEARCH PROGRAM  
GRADUATE SCHOOL OF BUSINESS & PUBLIC POLICY  
NAVAL POSTGRADUATE SCHOOL  
555 DYER ROAD, INGERSOLL HALL  
MONTEREY, CALIFORNIA 93943

[www.acquisitionresearch.org](http://www.acquisitionresearch.org)